



August 3, 2000

Mr. George D. Cato
Supervising Attorney
Texas Department Of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-2942

Dear Mr. Cato:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137704.

The Texas Department of Health (the "department") received a request for "information regarding the recall of a [specified] dried beef product," including "distributors, retail grocers, and restaurants where the product was shipped for potential sale in Corpus Christi, Alice, and Robstown." You have submitted for our review information that is responsive to the request which consists of a list of buyers, including the address and phone number for each buyer, that the department obtained from a third party, Cisneros Packing ("Cisneros"). You state that the list "may be" excepted from disclosure under section 552.110 of the Government Code. You also advise that the department "takes no position" with regard to the applicability of section 552.110.

Section 552.110 of the Government Code protects the proprietary interests of private parties that have submitted information to governmental bodies by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated, based on specific factual evidence, that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b); Open Records Decision No. 552 at 2 (1990). Section 552.305 of the Government Code provides that if a private party's proprietary information may be subject to exception under section 552.110, a governmental body must make a good-faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542

at 2-3 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). Upon receipt of notice under section 552.305(d), the third party has ten business days in which to submit to this office its arguments, if any, as to why the information is protected by section 552.110. *See* Gov't Code § 552.305(d)(2)(B). You have notified Cisneros of the request by a letter dated June 1, 2000 in compliance with section 552.305 of the Government Code.

Cisneros did not timely respond to the notice¹; therefore, we have no basis to conclude that the submitted list is excepted from disclosure.² *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). The information must, therefore, be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹Cisneros responded to the notice through its attorneys. The response is dated and was received by this office on July 20, 2000. Thus, Cisneros did not respond within ten business days as required by Gov't Code § 552.305(d)(2)(B).

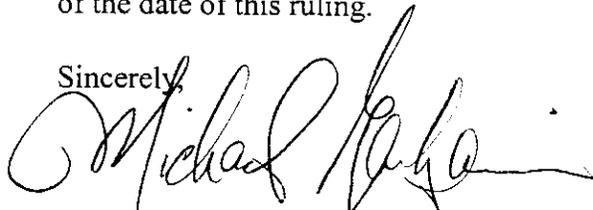
²You have submitted for our review a portion of a directive from the Food Safety and Inspection Service of the United States Department of Agriculture. You state "it is worthy of mention that [the directive] states that press releases will not identify the specific recipients of products unless the supplier chooses to release the information to the public." We note that the directive references no specific provision of law that operates to make confidential information regarding the "recipients of products." You cite no confidentiality provision, nor are we aware of any, that applies to the submitted information. We conclude that the submitted directive does not demonstrate that any of the exceptions to disclosure under the Public Information Act applies to the information at issue.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137704

Encl. Submitted documents

cc: Mr. Ken Sullivan
KIII-TV
5002 South Padre Island Drive
Corpus Christi, Texas 78411
(w/o enclosures)